IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 5465 of 1999(A)

PETITIONER:

M/S.GAJANANA AGENCIES,
KANHANGAD-675 351,
REP. BY ITS MANAGING PARTNER,
H.SATHISH KAMATH, S/O.LATE
H.VITTAL KAMATH, RESIDING AT
HOSDURG, KANHANGAD.

BY ADV. SRI.T.M.SREEDHARAN
SRI.N.UNNIKRISHNAN

RESPONDENTS:
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1. THE INTELLIGENCE OFFICER,
SQUAD NO.II, AGRL. INCOME TAX &
SALES TAX, KASARGOD.

2. THE DY. COMMISSIONER OF COMMERCIAL
TAXES, KANNUR.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
VIKAS BHAVAN, TRIVANDRUM.

4. STATE OF KERALA, REP. BY
THE CHIEF SECRETARY, SECRETARIAT,
TRIVANDRUM.

5. THE TAHSILDAR(R.R.),
HOSDURG,
KANHANGAD.

BY GOVERNMENT PLEADER SRI.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.9321/1999 IN O.P. NO.5465/1999

DISMISSED:

19.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF NOTICE DT.16.12.9.

P2: TRUE COPY OF REPLY DT.24.12.96.

P3: TRUE COPY OF NOTICE DT.30.12.96.

P4: TRUE COPY OF NOTICE DT.7.4.97.

P5: TRUE COPY OF LETTER DT.17.4.97.

P6: .DO. DT.7.11.97.

P7:TRUE COPY OF JUDGMENT DT.5.12.97 IN O.P. NO.21452/97.

P8: TRUE COPY OF LETTER DT.11.12.97.

P9: TRUE COPY OF ORDER DT.24.12.97.

P10: TRUE COPY OF ORDER DT.16.11.98 IN R.P. NO.90/97.

P11: TRUE COPY OF REVISION PETITION DT.24.11.98.

P12: TRUE COPY OF ORDER DT.11.2.99 IN ST.R.P. NO.163/98.

P12(a): TRUE COPY OF ORDER DT.5.12.97 IN T.A. NO.390/97.

P13: TRUE COPY OF R.R. NOTICE ISSUE BY R5.

P14: TRUE COPY OF RECEIPT DT.19.12.98.

P15: TRUE COPY OF ASSESSMENT ORDER FOR 1996-97 DT.7.9.2001.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.5465 of 1999

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Dated this the 19th day of November, 2007.

JUDGMENT

The petitioner is challenging penalty levied under Section 45A of the KGST Act for evasion of sales tax confirmed by final orders issued by the Commissioner of Commercial Taxes vide Ext.P12. I have gone through the impugned orders and heard counsel appearing for the petitioner and the Government Pleader. The petitioner, a dealer in rubber, was found engaged in malpractice i.e. by writing lower quantity in the original and triplicate of the delivery note and by writing actual quantity in the duplicate copy which was used for transport. According to the petitioner, goods have been transported in petitioner's own vehicles and transport was mostly from outside place of purchase to petitioner's own place of business. If petitioner had a bonafide case that there was no misuse of transport document, petitioner could have produced the duplicate (green copy) of the delivery note which was the document used for transport. Petitioner had absolute control over the duplicate copies of delivery notes as they themselves were the transporters. Therefore, I see no reason why petitioner declined to produce duplicate copy of delivery notes to substantiate their

case that entries in all copies are the same. Even though several opportunities were granted by the authorities, particularly under direction issued by this court, it is seen from the impugned orders that inspite of all the opportunities granted at different levels, petitioner did not produce any duplicate delivery note which is the statutory form prescribed for transport of goods under Rule 32(18) of the KGST Rules. The petitioner is bound to maintain the delivery note for transport under Rule 32(18) read with sub-rule 21 of the KGST Rules. The Intelligence Officer in fact noticed that petitioner had left sufficient space in the delivery note to be filled up. Strangely the quantity recorded by the petitioner as transported in trucks with 6 tonnes to 10 tonnes capacity is 400 kilos, 1000 kilos etc. Obviously the finding of the officer that full load or higher quantity was transported in trucks with higher capacity and that 400 or 1000 kilos accounted by the petitioner is bogus, is quite justified. The petitioner's purchases are from growers and from dealers and it is hard to believe that a truck is sent to bring 400 kg. of rubber when such truck can carry 6 tonnes to 10 tonnes of commodity. The concurrent finding of fact clearly establish evasion of tax and I find the quantum of penalty is also determined in a reasonable manner. As already stated, petitioner did not choose to produce duplicate copies of delivery notes available with them. In the circumstances, I find no ground

to interfere with the penalty orders confirmed by Ext.P12. However, since stay was granted by this court and since amnesty scheme was available during pendency of the O.P., I reduce interest payable under Section 23(3) on balance penalty to 50% provided petitioner remits balance penalty within two weeks from date of receipt of copy of this judgment.

C.N.RAMACHANDRAN NAIR
Judge

pms